

RECORDATION NO 20859 FILED

SEP 9 '97

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ALVORD AND ALVORD  
ATTORNEYS AT LAW  
918 SIXTEENTH STREET, N.W.  
SUITE 200  
WASHINGTON, D.C.

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

20006-2973  
(202) 393-2266  
FAX (202) 393-2156

OF COUNSEL  
URBAN A. LESTER

RECORDATION NO 20859-A FILED

SEP 9 '97

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September 9, 1997

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of a Locomotive Lease Agreement, dated September 18, 1996, a primary document as defined in the Board's Rules for the Recordation of Documents, and the following secondary document related thereto: a Chattel Paper and Equipment Purchase Agreement, dated June 27, 1997.

The names and addresses of the parties to the enclosed documents are:

→ Locomotive Lease Agreement

Lessor: Relco Locomotives, Inc.  
113 Industrial Avenue  
Minooka, Illinois 60447

Lessee: Portland Bulk Terminals, L.L.C.  
P.O. Box 83838  
Portland, Oregon 97283

*Copy 1 - Counterpart*

Mr. Vernon A. Williams  
September 9, 1997  
Page 2

Chattel Paper and Equipment Purchase Agreement

Lessee: Relco Locomotives, Inc.  
113 Industrial Avenue  
Minooka, Illinois 60447

Lessor: Charter Financial, Inc.  
153 East 53<sup>rd</sup> Street  
New York, New York 10022

A description of the railroad equipment covered by the enclosed documents is:

three (3) locomotives bearing reporting marks and road numbers  
RE 1606, RE 1618 and RE 512

Also enclosed is a check in the amount of \$48.00 payable to the order of the  
Surface Transportation Board covering the required recordation fee.

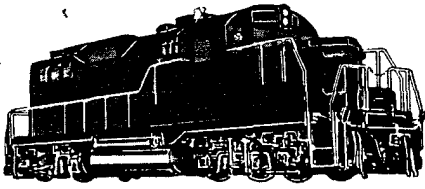
Kindly return one stamped copy of each of the enclosed documents to the  
undersigned.

Very truly yours,



Robert W. Alvord

RWA/bg  
Enclosures



# RELCO LOCOMOTIVES, INC.

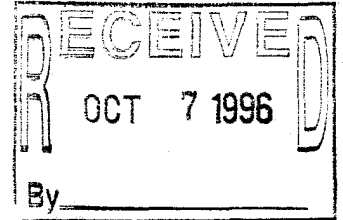
113 INDUSTRIAL AVENUE • MINOOKA, IL 60447-0058 • 815-467-3030 • FAX 815-467-3039

RECORDATION NO. 20859 FILED

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## LOCOMOTIVE LEASE AGREEMENT



THIS AGREEMENT, made and entered into this eighteenth day of September, 1996 by and between RELCO LOCOMOTIVES, INC., an Illinois Corporation, having its principal office in the city of Minooka, Illinois (hereinafter referred to as "Lessor") and **Portland Bulk Terminals, L.L.C.**, whose address is in Portland, Oregon (hereinafter referred to as the "Lessee").

### WITNESSED:

WHEREAS, Lessee desires to lease from Lessor for use in its business operations, the locomotives hereinafter described upon the terms and conditions herein set forth; and

WHEREAS, Lessor agrees to furnish the locomotives hereinafter described and is willing to lease the same to Lessee upon the terms and conditions herein set forth.

NOW THEREFORE, the parties hereto, for and in consideration of the mutual covenants and promises herein set forth and other good and valuable consideration, receipt and sufficiency of which is acknowledged, agree as follows;

1. LOCATION OF USE AND DESCRIPTION OF LOCOMOTIVES. Lessor leases and lets unto Lessee and Lessee accepts and takes from Lessor for use at its Portland, Oregon facility the locomotives identified as two EMD-SD9, 1750H.P., 180 ton locomotives. The Lessee may at its expense inspect or survey the locomotives in Lessor's Minooka, Illinois shop prior to shipment. One locomotive will be equipped with a Cattron remote control system to include repeater and remote E stops and speed control. Second unit will have MU capabilities. Both units will be painted tan with green trim. Paint chips will be furnished by Lessee.

2. RENT. Commencing on the date Lessee takes possession of the aforesaid locomotives, and thereafter during the term hereof and until possession of said locomotives are surrendered to Lessor, Lessee shall pay to Lessor for rental of said locomotives the sum as calculated for in the following table:

**LOCOMOTIVE MONTHLY LEASE RATE**

Two EMD-SD9, 1750 H.P., 180 ton locomotives  
Base Monthly Rate: \$5,787.00 (total for both locomotives)

**LOCOMOTIVE MONTHLY MAINTENANCE RATE SCHEDULE**

First 1 - 50 hours at \$20.90 per hour each locomotive  
Next 51 - 100 hours at \$16.50 per hour each locomotive  
Next 101 - 200 hours at \$ 6.60 per hour each locomotive  
Next 201 - 744 hours at \$ 4.95 per hour each locomotive

(Locomotive Monthly Maintenance Rate Schedule is based on the hours of operation of the locomotives during each calendar month.)

The base monthly rate will remain fixed for the term of the lease; however, the hourly/fixed maintenance charges will be adjusted annually at a rate equal to the national rate of inflation as published by the U.S. Bureau of Labor Statistics, CPI-U.

The first payment of the base rate is due on or before the date Lessee takes possession of the aforesaid locomotives. The base monthly rental is due on the first day of each month and in addition to said base monthly rental, the Lessee shall pay to Lessor the hourly rate charge for each hour the Diesel engine of the locomotives were in operation during the month. Payments will be made on the fifteenth (15) of the month covering hours used during the previous month. The Lessee shall furnish to Lessor, not later than the first day of each month during the term of their lease, the current engine hour meter reading. In the event a locomotive is out of service for repairs for more than one day during any month during the term of this lease, the base monthly rental charge for any such month will be reduced one thirtieth for each full day a locomotive is out of service. This credit will not apply if the repairs are necessitated by damage caused by the Lessee's negligence or abuse of the locomotives.

3a. LEASE TERM. This locomotive lease shall extend for an initial term of three years commencing with taking possession of the locomotives by Lessee, on or about the first week of January, 1997, and shall continue from year to year after the conclusion of such initial term until terminated by either party hereto by such party giving to the other party ninety (90) days notice in writing of its election to terminate this lease. In such event, this lease shall terminate at the expiration of said thirty day period following notice.

3b. **ASSIGNMENT OF LEASE.** This lease shall be assignable by Lessor and by its assigns without the consent of Lessee, but Lessee shall not be obligated to any assignee of Lessor except upon written notice of such assignment from Lessor or such assignee. Notwithstanding anything to the contrary contained herein, the obligation of Lessee to pay Rental to such assignee shall be absolute and unconditional and shall not be affected by any circumstances whatsoever and such payment shall be made without interruption or abatement notwithstanding any event or circumstance whatsoever, including, without limitation, the bankruptcy or insolvency of Lessee or any disaffirmance of this Lease by or on behalf of Lessee, and notwithstanding any defense, setoff recoupment or counterclaim or any other right whatsoever, whether by reason of breach of this Lease or otherwise which Lessee may now or hereafter have against Lessor and whether any such event shall be by reason of any act or omission of Lessor or otherwise provided however, that nothing herein contained shall effect any right of Lessee to enforce against Lessor any claim which Lessee may have against Lessor in any manner other than by abatement, attachment or recoupment of interference with, or set-off, counterclaim or defense against, the aforementioned payments to be made to such assignee. Lessee's undertaking herein to pay the Rental to and to perform the other obligations of Lessee hereunder for the benefit of an assignee of Lessor shall constitute a direct, independent and unconditional obligation of Lessee to said assignee. Lessee also acknowledges and agrees that any assignee of Lessor's interest in this lease shall have the right to exercise all rights, privileges and remedies (either in its own name or in the name of Lessor) which by terms of this lease are permitted to be exercised by Lessor.

3c. The Lessor's service and maintenance obligations under this lease are not assignable.

4. **RADIO REMOTE CONTROL SYSTEM, REPEATER, & E STOPS.** Where as the Lessee desires the locomotives to be equipped with a radio remote control system, repeater and E stops, the Lessor will supply, install, and maintain a Cattron Remote Control System, repeater and E stops.

(a) Lessor's maintenance of the system does not include damage or abuse of the remote control system, repeater or E stops, such as physical damage to the transmitter box, nor does it cover the transmitter batteries.

- f. Seller has the full legal right, power and authority to enter into this Purchase Agreement and to consummate all of the transactions contemplated by this Purchase Agreement, the execution and delivery of this Purchase Agreement by Seller has been approved by all necessary corporate or other action, and none of Seller's obligations hereunder will result in any breach of any provision of any agreement or instrument to which Seller is a party or by which Seller is bound;
- g. all signatures, names, addresses, amounts and other statements contained in the Agreements are true and correct;
- h. the Agreements conform to all applicable laws and regulations and is legally enforceable in the state or states where the Customer and the Locomotive are located, and if filing or recording of the Agreements or any chattel mortgage, mortgage, trust deed, financing statement or similar instrument is required or permitted by law, the same has been so filed or recorded as to be effective against all persons;
- i. the Locomotive has been delivered to and accepted by Customer in a condition satisfactory to Customer;
- j. Seller has complied and will continue to comply with all its representations, warranties, covenants and all other obligations to Customer under the Agreements;
- k. Seller will indemnify and hold Buyer harmless from and defend Buyer against (i) any liability or expense under, on account of or relating to any of the Agreements and Locomotive; (ii) any payment not made by Customer due to claims by Customer that an item of Locomotive is out of service, has not been maintained or is unavailable for use by Customer; and (iii) any payment not made by Customer, and/or late fees incurred by Buyer as a result of Seller's late or improper billing procedure.
- l. Customer has received the terms of each of the Agreements and has neither disputed any obligation arising under any of the Agreements nor shall Customer have any claim, defense or right of offset or abatement with respect to any of the payments set forth in the Agreements or any of Customer's obligations thereunder;
- m. Customer's obligation to make all of the payments in the amounts set forth in the Agreements is absolute, irrevocable and unconditional and shall not be affected by any circumstances whatsoever;
- n. no amount due under any of the Agreements has been prepaid by Customer, and no deposit has been paid by Customer except as specifically stated in the Agreement delivered to Buyer;
- o. Seller has not made any prior sale or assignment of the Agreements or any item of Locomotive to any person, firm or corporation, or granted any waiver under or agreed to any modification or amendment of the Agreements or any of them;
- p. Customer has complied with all of its obligations to Seller under the Agreements, and Customer is not now and has not been in default of such obligations; and
- q. if the Locomotive Lease Agreement is a true lease, Seller is the lawful owner of the Locomotive thereunder and hereby conveys its absolute right and title to each and every item of such Locomotive to Buyer.



(b) Lessor's maintenance of the system does not include any responsibility for loss of production or consequential damage that the Lessee may incur as a result of a failure of the radio remote control system, repeater or E stops.

(c) All provisions of paragraph #14 entitled "Lessor's Indemnity" contained in this locomotive lease agreement shall include the radio remote control, repeater and E stops as an integral part of the locomotives.

5. **MAINTENANCE BY LESSOR.** Lessor shall, at its expense, maintain the locomotives in good running condition. Lessor shall supply all replacement parts, lubricants and filters, and shall perform all major maintenance repairs, and periodic inspections, lubrications, and filter changes. For purposes of this Lease, a major maintenance repair is a repair that requires more than two man hours of work to complete.

6. **INSPECTION/MAINTENANCE BY LESSEE.** The Lessee will supply the locomotives with fuel, water/anti-freeze and sand, in accordance with Lessor's specifications as may be needed. The Lessee will perform minor repairs (i.e. repairs requiring two man hours or less per occasion), daily inspections (per Lessor's "Daily Inspection Form #223" - schedule A), such routine maintenance as addition of lubricating oils and adjustment of brake piston travel, when needed, and will protect the locomotive cooling water from freezing.

7. **LESSEE'S RESPONSIBILITY FOR DAMAGE TO LOCOMOTIVES.** The Lessee shall be responsible for all physical damage to the locomotives from any cause, other than normal wear, while the locomotives are in the possession of Lessee. This shall include, but not necessarily be limited to damages resulting from collisions, accidents, derailments, vandalism and from the negligence on the part of the Lessee or Lessee's employees, agents or subcontractors or from the acts or omissions of the Lessee or its employees, agents or subcontractors. Lessee's liability for damage to the locomotives shall not exceed the sum of \$150,000.00 per locomotive, per occurrence.

8. **NOTICE OF DEFECTS.** Lessee shall notify Lessor promptly of any defects requiring repairs as observed by the Lessee. Lessee will permit Lessor's employees or agents on Lessee's property for the purpose of making inspections of or repairs to the locomotives.

9. OPERATION BY QUALIFIED PERSONNEL. Lessee is solely responsible for the safe operation of the locomotives and for insuring that all personnel involved in any way with the locomotives, including but not limited to those involved in the operation and maintenance of the locomotives are fully qualified and properly supervised.

10. OPERATION ONLY IN SAFE LOCATION. Lessee is solely responsible for determining where and when the locomotives shall be operated. Lessee acknowledges and fully understands that there is severe danger of fire or explosion if the locomotives are operated in any area or building in which a spark or flame could cause an explosion or fire, and Lessee assumes all risk of loss due to explosion or fire in any way resulting from or connected with the operation of the locomotives while in Lessee's possession.

11. LESSEE'S DEFAULT. Time is of the essence of this agreement. Lessor, at its option, may by written notice to Lessee declare this lease in default on the happening of any of the following:

(a) Default by Lessee in payment or performance of any of its obligations under this lease.

(b) Voluntary assignment of Lessee's interest herein.

(c) Involuntary transfer of Lessee's interest herein.

(d) Expiration or cancellation of any policy of insurance agreed to be paid for by Lessee, or the cessation in force according to its original terms of such insurance, or of any extension or renewal of such insurance, during the entire term of this lease.

On declaration by Lessor that the lease is in default, and after a fifteen (15) day cure period, the locomotives then subject to this lease shall be surrendered and delivered to Lessor, and Lessor may take possession of the locomotives wherever they may be found, with or without process of law, and for that purpose may enter on the premises of Lessee. On default, Lessee and Lessee's successor in interest, whether by operation of law or otherwise, shall have no right, title or interest in the locomotive leases under this lease, or the possession or use of such locomotives, and Lessor shall retain all rents and other sums paid by Lessee under this lease with respect to all such locomotives and shall be entitled to such other remedies as may be provided by law.



12. RISK OF LOSS AND INSURANCE.

(a) All risk of loss or damage to the locomotives shall be borne by the Lessee as described in paragraph #7, and Lessee shall deliver to Lessor a certificate of insurance covering the damage or destruction of the locomotives, which are the subject of this lease, not to exceed \$150,000.00 per occurrence.

(b) Prior to the effective date of this agreement, Lessee shall cause Lessor to be named as a primary additional insured on a broad form policy of comprehensive general liability insurance, issued by a company rated "A" or better by Best's Insurance Services, and otherwise reasonably acceptable to Lessor, and shall deliver to Lessor a certificate of insurance, and endorsement to the underlying policy or policies, evidencing compliance with this requirement. Said certificate and endorsement shall provide that the policy of insurance represented thereby shall not be canceled or altered without thirty (30) days notice to Lessor, and shall evidence an insurance of not less than \$2 million for injury or death to one person; of not less than \$5 million for injury or death to two or more persons as a result of any one accident or incident; and for damage or destruction to the locomotives, which are the subject matter of this lease, as stipulated in paragraph 7.

It is a condition of this lease that Lessee provide Lessor with evidence of annual renewal of said insurance during the term of this lease. Lessee shall maintain such insurance during the entire term of this lease, and if such insurance is a claims made policy for a period of two years following the termination of the lease, as to matters occurring during the term of the lease.

13. TAXES, LICENSES. The Lessee shall pay all sales taxes, use taxes, and personal property taxes, whether payable by the Lessor or the Lessee or others, on or relating to the possession, control, use or operation of the locomotives, and shall file all returns required therefore and furnish copies thereof to the Lessor. Upon demand, the Lessee shall reimburse the Lessor for any such taxes, assessments, charges, fines, or penalties, which the Lessor may be compelled to pay in connection with the equipment. The Lessor will cooperate with the Lessee and furnish the Lessee with any information available to the Lessor in connection with the Lessee's obligations under this paragraph.

14. LESSOR'S INDEMNITY.

(a) The Lessee shall indemnify, protect and hold harmless the Lessor, its agents, servants, successors and assign from and against all losses, damages, injuries, claims, demands, and expenses, including legal expenses, of whatever nature, arising out of, incident to, connected with or in any way caused by the possession, control, use or operation of the locomotives by the Lessee, its

employees, agents, servants, or subcontractors, or operation of the locomotives, regardless of where, how, and by whom operated, except for any damage or loss resulting directly from the negligence of Lessor.

(b) The Lessee shall assume the settlement of, and the defense of any suit or other legal proceedings brought to enforce all such losses, damages, injuries, claims, demands and expenses, and shall pay all judgments entered in any such suit or suits or other legal proceedings.

(c) The indemnities and assumptions of liabilities and obligation herein provided for shall continue in full force and effect notwithstanding the termination to the Lease Agreement, whether by expiration of time, by operation of law or otherwise.

(d) The Lessor is an independent contractor and nothing contained in this Lease Agreement shall authorize the Lessee or any other person to operate any item of equipment so as to incur or impose any liability or obligation for or on behalf of the Lessor.

15. FREIGHT. Lessee shall pay all inbound freight charges, incurred in delivery of the locomotives to the Lessee's siding. Lessor will pay the outbound freight charges when the locomotives are shipped outbound. If for any reason this Lease Agreement is terminated before it has been in effect for three year(s), and Lessor is not in default, the Lessee shall reimburse the Lessor an amount equal of the actual outbound freight charges to the destination designated by the Lessor.

16. POSSESSION. Possession of the locomotives shall pass to Lessee as of the moment the locomotives arrive on Lessee's railroad siding track. Possession of the locomotives shall be reacquired by Lessor when the locomotives leave the Lessee's siding under the control of Lessor or its agents or employees after the termination of this Lease for whatever reason.

17. TITLE TO LOCOMOTIVES. Title to the locomotives which are the subject matter of this lease shall be and remain in Lessor's name at all times during the term of this Lease. Lessee shall not remove or permit to be removed any serial number, model, name or other indicia showing ownership of the locomotives in Lessor.

18. INVALID PROVISION. Any provision of this Lease Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the rest of this Lease Agreement.

19. **CONSTRUCTION.** The validity, construction, and enforcement of this Lease Agreement shall be governed by the laws of the state of Illinois.

20. **CONSENT TO JURISDICTION.** By execution of this Lease, Lessor and Lessee hereby submit to the jurisdiction of the courts of the state of Illinois.

21. **COMPLETE AGREEMENT.** This Lease Agreement contains the entire understanding of the parties, and such understanding may not be modified or terminated except in writing signed by the parties.

22. **NOTICES.** All notices shall be in writing and delivered in person to an officer of the party to which such notice is being given or mailed by registered mail to such party at the address first above written, or to such other address as may be hereafter specified by like notice by either party to the other.

23. **BINDING EFFECT.** This lease shall be binding upon and inure to the benefit of the parties hereto, their successors, legal representatives, and assigns.

IN WITNESS WHEREOF, the Lessor and the Lessee have caused these presents to be duly executed the day and year first above written.

**LESSOR:**  
**RELCO LOCOMOTIVES, INC.**  
113 Industrial Ave.  
Minooka, IL 60447

ATTEST: *Gem Copeland* BY: *Donald H. Buchanan*  
TITLE: *President*

**LESSEE:**  
**Portland Bulk Terminals, L.L.C.**  
P.O. Box 83838  
Portland, OR 97283

ATTEST: *Wanda Campbell* BY: *Alan E. Shultz*  
TITLE: *Vice President & General Manager*

**RIDER TO LOCOMOTIVE LEASE AGREEMENT DATED SEPTEMBER 18, 1996**

Rider to Locomotive Lease Agreement between Portland Bulk Terminals, L.L.C. ("Lessee") and RELCO LOCOMOTIVES, INC. ("Lessor") dated September 18, 1996 (the "Agreement").

The Lessor and Lessee hereby agree to amend the Agreement as follows:

1. The two (2) EMD 16 Cylinder GP-9 locomotives with identifying marks <sup>RE</sup> "1606" and <sup>RE</sup> "1618" and one (1) EMD Slug with identifying mark <sup>RE</sup> "512" are deemed to be the locomotives leased under the Agreement and all references to the two (2) EMD-SD9, 1750 H.P., 180 ton locomotives are deemed to be deleted from the Agreement.
2. Except for the substitution of the locomotives covered by the Agreement, there are no other modifications or amendments to the Agreement, which remains in full force and effect. All of the terms, conditions and provisions hereunder shall be deemed to be an indivisible part of the Agreement.

IN WITNESS WHEREOF, Lessee and Lessor have duly executed this Rider to the Agreement as of the date first above written.

RELCO LOCOMOTIVES, INC.

By: *Donald L. Beckman*  
Its: *President*

Portland Bulk Terminals, L.L.C.

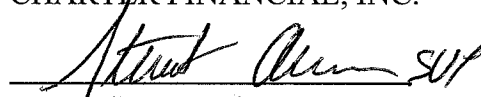
By: *Alan E. Shultz*  
Its: *President*

## CERTIFICATE OF AUTHENTICATION

THE UNDERSIGNED HEREBY CERTIFIES that the copy of the Locomotive Lease Agreement is a true and correct copy of that which has been delivered to Charter Financial, Inc. by Relco Locomotives, Inc. in connection with Locomotive Lease Agreement by and between Relco Locomotives, Inc., an Illinois corporation, as Lessor and Portland Bulk Terminals, L.L.C, an Oregon corporation.

Dated this 30th day of June 1997

CHARTER FINANCIAL, INC.

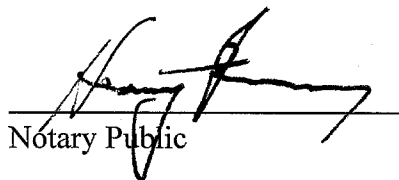


Stewart Abramson  
Senior Vice President

STATE OF NEW YORK, COUNTY OF NEW YORK

ss:

On the 30th day of June, 1997 before me personally came Stewart Abramson to me known, who, being by me duly sworn, did depose and say that she is the Senior Vice President of Charter Financial, Inc., the corporation described in and which executed the foregoing instrument; that she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that she signed her name thereto by like order.

  
Notary Public

HENRY FROMMER  
Notary Public, State of New York  
No. 02FR5039738  
Qualified in New York County  
Commission Expires Feb. 21, 1997<sup>9</sup>